No. 95-1046

Supreme Court, U.S.
FILED
JAN 22 1996
CLERK

In The

Supreme Court of the United States

October Term, 1995

GREEN RIVER REALTY TRUST, PAUL J. JENKINS, ALLEGED TRUSTEE,

Petitioner,

vs.

MEETINGHOUSE COOPERATIVE BANK,

Respondent.

On Petition for Writ of Certiorari to the Massachusetts Supreme Judicial Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether, on the facts of this case, Massachusetts state law allowed the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court to affirm on appeal the decision of the trial court, pursuant to its long established civil rules and precedents, to deny a litigant's motion as a sanction for that litigant's willful disobedience of two court orders mandating him to appear for a deposition regarding the basis and validity of his motion.

STATEMENT OF INTERESTED PARTIES

Pursuant to Rule 29(6) of the Rules of the United States Supreme Court, Meetinghouse Cooperative Bank states that it has no parent companies and no subsidiaries that are not wholly owned.

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NO. 95-1046

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

Green River Realty Trust, Paul J. Jenkins, Alleged Trustee
Petitioner,

vs.

Meetinghouse Cooperative Bank,
Respondent.

On Petition for Writ of Certiorari to the Massachusetts Supreme Judicial Court

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioner Paul J. Jenkins ("Jenkins"), the alleged trustee of the Green River Realty Trust, willfully disobeyed at

least two orders of the Massachusetts Superior Court, by refusing to appear for a deposition ordered by the Superior Court at which he would have been examined under oath, *inter alia*, regarding his purported status as alleged successor trustee.

The Massachusetts Superior Court denied Jenkins' Motion to Vacate the Default Judgment as a sanction for his willful disobedience of at least two Superior Court orders. Jenkins appealed from that denial.

On March 15, 1995, the Massachusetts Appeals Court issued a five (5) page opinion affirming the Superior Court's denial of Jenkins' motion as a sanction for his willful disobedience of court orders. Jenkins requested further review from the Massachusetts Supreme Judicial Court.

On June 5, 1995, the Massachusetts Supreme Judicial Court denied Jenkins' request for further appellate review. On July 11, 1995, the Massachusetts Supreme Court denied Jenkins' Petition for Reconsideration of that decision.

Respondent Meetinghouse Cooperative Bank ("Meetinghouse") submits that this court does not have jurisdiction to review the order in question by writ of certiorari because none of the possible questions presented by the petitioner concern conflicting decisions of courts of appeal or state courts, nor do they bring into question the validity of a treaty or statute of the United States or the validity of a statute of any state on the ground of its being repugnant to the constitution, treaty or laws of the United States. Likewise, the petitioner has not described any title, right, privilege or immunity as being especially set up or claimed under the constitution, treaty or statutes of the United States.

STATEMENT OF THE FACTS

Respondent Meetinghouse objects to petitioner Jenkins' characterization of the facts as misleading and incomplete. Respondent states that the true facts are as the Massachusetts Appeals Court has stated them in its decision and as reflected by the record. An accurate summary of the essential facts is as follows.

On or about April 27, 1989, defendant Martin J. Worobey ("Worobey") executed a Promissory Note ("Note"), pursuant to a real estate development project, for the principal sum of $225,000 in favor of respondent Meetinghouse. (R. AI 5). In 1989, Worobey defaulted on that Note. (R. AI 6). By January of 1991, Worobey's total indebtedness to Meetinghouse exceeded $341,542.20 and Meetinghouse filed the present action to recover on the Note. (R. AI 12).

On February 23, 1991, respondent Meetinghouse served the summons and complaint in this action on Worobey, both individually and as Trustee of the Green River Realty Trust, at his last and usual address, 11 Cheshire Road in Sharon, Massachusetts. (R. AII 65). Respondent Meetinghouse's process server was told that Worobey had sold that home and moved without leaving a forwarding address. (Id.). Worobey has never notified Meetinghouse of any change of address. Upon investigation, Meetinghouse discovered that Worobey owned at least two properties in Florida.

In February of 1991, Respondent Meetinghouse additionally served Worobey with the summons and complaint at those Florida addresses. (R. AII 69 and 71 [Return Receipt Mailings #P 729 140 358 and #P 729 140 360]) and (R. AII 73 and 74 [Return Receipt Mailings #P 729 140 359 and #P 729 140 357]). Service was deemed proper and complete by the

Massachusetts Superior Court. (R. AII 19). Worobey never responded to the Complaint.

On July 1, 1991, respondent Meetinghouse obtained a default judgment against Worobey both individually and as trustee of the Green River Realty Trust in the amount of $341,542.20 plus interest and costs. (R. AII 19). Respondent Meetinghouse was unable to locate any assets in Massachusetts with which to satisfy that judgment, and, therefore, looked to Worobey's Florida assets.

On January 23, 1992, Meetinghouse retained the services of Rosenfeld, Stein & Sugerman in Miami, Florida ("Florida counsel") to domesticate the Massachusetts judgment and proceed to locate and execute upon any assets owned by Worobey in Florida. On August 14, 1993, Florida counsel personally served Worobey, in Florida, with a deposition subpoena to appear for a "Deposition in Aid of Execution" on September 28, 1993. (R. AII 100). Worobey, however, never attended the deposition scheduled in Florida.

On September 3, 1993, prior to the Florida deposition, petitioner Jenkins filed, *pro se*, a Motion to Vacate the Default Judgment in Massachusetts purportedly on behalf of the Green River Realty Trust. (R. AI 80). At approximately the same time, Worobey hired counsel in Florida who successfully stayed the Florida proceeding, based upon the motion to vacate the default judgment which Jenkins filed in the present case. Worobey and his Florida counsel misrepresented to the Florida Court the effect of Jenkins' Motion to Vacate the Massachusetts Default Judgment, stating that if Jenkins were successful "everything filed [in Massachusetts] is void." (R. AII 103, para. 62). Jenkins, however, did not, and cannot, file a *pro se* motion in Massachusetts to vacate the judgment against Worobey personally, as Jenkins is not a licensed attorney. M.G.L. c. 21, §§ 46 & 46A. (Appendices F and G).

Similarly, it has never been established that Jenkins has *pro se* status as successor trustee to the Green River Realty Trust because he has willfully disobeyed two orders of the Massachusetts Superior Court directing that his deposition be taken for that and other purposes. (R AII 142).

In addition, Rule 60(b) of the Mass. R. Civ. Proc. states that the filing of a motion, such as Jenkins' motion, for relief from a judgment or order will not affect the finality of that order. Nevertheless, the Florida court refused to take judicial notice of Rule 60(b). Thus, in the Fall of 1993, the Florida action was continued pending the outcome of Jenkins' Massachusetts action to vacate the Default Judgment, and subsequently the Florida action was dismissed.

After Jenkins filed the Motion to Vacate the Default Judgment in Massachusetts in the Fall of 1993 (over two years after entry of the judgment) (R. AI 79, 80), Jenkins willfully disobeyed at least two Superior Court Orders by twice refusing to appear for a deposition ordered by the Superior Court. If this deposition had taken place, Jenkins would have been examined under oath, *inter alia,* regarding his purported status as alleged successor Trustee and the merits (or lack thereof) of his motion, and the collusion between he and Worobey to frustrate Meetinghouse's collection of its lawful debt.

On December 7, 1993, the Suffolk Superior Court denied Jenkins' Motion to Vacate the Default Judgment as a sanction because "Mr. Jenkins [wa]s in violation of at least two court orders." (R. AII 142). On December 9, 1993, petitioner Jenkins filed a notice of Appeal of the Superior Court's decision (R. AII 143) and requested two extensions of time in which to file an appellate brief and a copy of the transcript. (Appendices A and B). Following the issuance on March 15, 1995 of the Massachusetts Appeals Court's opinion affirming the Superior Court's denial of Jenkins' motion, he filed yet

another request for an extension of time. In that request, dated April 7, 1995, he asked for an order staying issuance of the Appeals Court's rescript opinion. (Appendix C). On April 12, 1995, respondent Meetinghouse requested that the Massachusetts Appeals Court deny petitioner Jenkins any further requests for extensions of time during the appellate process. (Appendix D). By order dated April 13, 1995, the Massachusetts Appeals Court stated that petitioner Jenkins should not expect any further enlargements of time. (Id.).

On Apri! 18, 1995, Jenkins filed an application for further appellate review to the Massachusetts Supreme Judicial Court. Meetinghouse opposed that request and, on, June 5, 1995, the Massachusetts Superior Court denied Jenkins' request. On July 11, 1995, the Massachusetts Supreme Court denied Jenkins' petition for reconsideration of that decision.

Petitioner Jenkins gave the Massachusetts Superior Court no reason for failing to contest the default judgment between 1991 and 1993. (R. AI 80-83). Nor did petitioner Jenkins ever explain to the Massachusetts Superior Court his refusal to appear for his court-ordered deposition at which he would have been questioned under oath concerning, *inter alia*, his alleged basis for standing to file the *pro se* motion to vacate, his interest in this case, and why he contends that the last and usual service on Worobey was not properly effected under the Massachusetts Rules of Civil Procedure. (R. AI 81-82). Similarly, Jenkins throughout the appellate process has failed to proffer an excuse for his willful violations of at least two Superior Court orders mandating that he attend such a deposition. Instead, Jenkins has delayed enforcement of the judgment by filing frivolous motions and petitions to exhaust every avenue of appeal asking for continuances each step of the way.

SUMMARY OF ARGUMENT

Respondent Meetinghouse Cooperative Bank respectfully requests that this Court deny the petition of *pro se* petitioner Paul J. Jenkins for Writ of Certiorari seeking to review the opinion of the Massachusetts Appeals Court in this case. That 5 (five) page opinion affirmed the Massachusetts Superior Court's denial of Mr. Jenkins' 1993 motion to vacate a 1991 Superior Court judgment as a sanction for Jenkins' willful disobedience of at least two Superior Court orders. In support of its request that the petition be denied, respondent Meetinghouse states that: (1) Mr. Jenkins has misstated the question considered and ruled upon by the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court in this case; and (2) this case involves only a state law issue, involves no "special" or "important" issue of law or fact, turns on its own facts, and does not affect individuals other than the litigants.

Although petitioner Jenkins has filed his motions *pro se*, he does not appear to have *pro se* standing in this case as Jenkins appears to be representing the interests of others, rather than his own interests. A *pro se* litigant representing the interests of others is, by definition, "practicing law" without a license. Further, Jenkins is apparently a former attorney who is illegally practicing law under the guise of a *pro se* title because his license to practice law in Massachusetts was suspended in 1986 for misusing client funds. (Appendix E). There is no merit to Jenkins' argument that the Massachusetts Courts lacked the power to deny his motion as a sanction for his inexcusable conduct. Mass. R. Civ. P. 37(b)(2)(C). (Appendix H). Jenkins' petition should be denied as it is meritless and was filed to further delay this litigation and the enforcement of the 1991 default judgment which the respondent obtained from the Massachusetts Superior Court.

REASONS WHY THE PETITION SHOULD BE DENIED

I. Petitioner Jenkins has misstated the question that was considered and ruled upon in this case by the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court.

The issue which was considered and ruled upon by the Massachusetts Appeals Court in a 5 (five) page opinion was whether the Massachusetts Superior Court abused its discretion by denying Jenkins' motion to remove a default judgment. (P. Appendix B2-B6). The denial of Jenkins' motion was a sanction for his "clear violations of court orders regarding discovery with no attempt to comply or showing of an inability to comply." (P. Appendix B2-B6) and (Appendix H). The Massachusetts Appeals Court ruled that the dismissal of Jenkins' motion by the Massachusetts Superior Court was proper and that it was unnecessary to address the petitioner's "remaining contentions." (Id.). The Massachusetts Supreme Judicial Court denied Jenkins' request for further appellate review.

Here, petitioner Jenkins filed, allegedly *pro se*, a frivolous motion, ignored orders requiring him to appear for a deposition, and then appealed the denial of his motion which was a sanction for his own misconduct. Now, in addition to his willful violation of the Massachusetts Superior Court's orders and rules, Jenkins is requesting that the United States Supreme Court grant a Writ of Certiorari, in the complete absence of an "important" or "special" issue of law or fact. Even if petitioner Jenkins were not an attorney formerly licensed by the Commonwealth of Massachusetts and thus (presumably) fully familiar with court procedures and the consequences of willful disobedience of them (Appendix E), all *pro se* litigants must follow the rules of civil procedure. (P. Appendix B2-B6). In

fact, even if Jenkins were represented by licensed counsel and the misconduct was committed by that counsel, Jenkins could not avoid the consequences of that misconduct. *See Damiani v. Rhode Island Hospital*, 704 F.2d 12, 16 (1st Cir. 1983) (petitioner voluntarily chose his attorney to represent him and "cannot now avoid the consequences of the acts and omissions of this freely selected agent").

Jenkins' petition should be denied because the decision of the Massachusetts Appeals Court affirming the denial of Jenkins' motion as a sanction was proper. "The fact that [Jenkins] is *pro se* does not excuse him from compliance with relevant rules of substantive and procedural law." *Pandey v. Roulston*, 419 Mass. 1010, 1011 (1995) (rescript).

II. The Decision of the Massachusetts Appeals Court considers only a state law issue, is proper, turns upon its own facts, does not affect individuals other than the litigants, and does not involve a "special" or "important" issue of law or fact.

The Massachusetts Appeals Court properly ruled in its decision dated March 15, 1995, that the Superior Court's denial in the present case of petitioner Jenkins' *pro se* motion — as a sanction for petitioner's willful disregard of the Massachusetts Superior Court's orders — was well within the Superior Court's discretion. Mass. R. Civ. P. 37(b)(2)(C). (Appendix H). It is well established in Massachusetts that when "a [*pro se*] noncompliant litigant has manifested a disregard for orders of the court ... a trial judge need not first exhaust milder sanctions before resorting to dismissal." *Friedman v. Globe Newspaper, Co.*, 38 Mass. App. Ct. 923, 924 (1995) (rescript). Such a principle applies with even greater force to a *pro se* litigant like respondent Jenkins who is "well educated [] and able to understand the clear language of" the Superior Court's

orders and the Massachusetts Rules of Civil Procedure as he was once an attorney licensed to practice law in the Commonwealth. *Friedman v. Globe Newspaper Company*, 38 Mass. App. Ct. 923, 924 (1995) (rescript) and (Appendix E).

"There is certainly no merit to the contention that dismissal of [Jenkins'] claim because of his [] unexcused conduct imposes an unjust penalty on [him]." *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633 (1962); Compare *Damiani v. Rhode Island Hospital*, 704 F.2d 12, 17 (1st Cir. 1983) (court turns a "deaf ear" on plaintiff's plea that he should not be penalized for his attorney's failures). Sympathy for Jenkins' argument "would be visiting the sins of [Jenkins] upon [Meetinghouse]." Damiani, 704 F.2d at 17.

The result of petitioner Jenkins' conduct is that he has now been successful in illegally practicing law in the Commonwealth of Massachusetts for more than two years. Petitioner Jenkins' involvement in the present case has been in representation of Martin J. Worobey's interests, not his own. Petitioner Jenkins' purpose in filing frivolous motions and using other dilatory tactics in the instant matter has been to prevent Meetinghouse from enforcing its 1991 judgment against Worobey in Florida, where Worobey and his assets resided in 1993. Petitioner Jenkins now has successfully obtained for Mr. Worobey more than two years in which to encumber, transfer, hide, or otherwise dispose of the Florida assets against which Meetinghouse had initiated suit, in 1993 in Florida, based upon the 1991 judgment. This Court should not permit any further delay.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

MEETINGHOUSE COOPERATIVE BANK,
By its attorneys,

Keith C. Long
Christa A. Arcos
WARNER & STACKPOLE
75 State Street
Boston, MA 02109
617-951-9000
Counsel for Respondent

DATED: January , 1996

APPENDIX A - DECISION OF THE MASSACHUSETTS APPEALS COURT ALLOWING JENKINS' MOTION FOR AN EXTENSION OF TIME IN WHICH TO FILE BRIEF

Commonwealth of Massachusetts

Suffolk, SS

Appeals Court
94-P-714

Meetinghouse Cooperative Bank,
Plaintiff-Appellee
v.

Green River Realty Trust, et al
Defendant-Appellant

MOTION OF THE APPELLANT FOR AN EXTENSION OF TIME IN WHICH TO FILE BRIEF

Now comes the undersigned appellant and moves this Honorable Court for an Order extending the time in which to file his brief up to and including July 20, 1994.

In support thereof, the appellant states that he is appearing pro se, and the additional time is needed to research and brief the issues raised by the considerable lower court file generated at the trial level.

Respectfully Submitted,

Paul J. Jenkins, Trustee

5/13/94

Green River Realty Trust
Paul J. Jenkins, Trustee
PO Box 15
Holbrook, MA 02343-0015
(617) 961-5601

Appendix A

Certificate of Service

I, Paul A. Jenkins, hereby make oath that I served notice of the within motion by mailing copies thereof by postage prepaid first class mail to Warner & Stackpole, 75 State Street, Boston, MA 02109 on 5/13/94.

Signed under the pains and penalties of perjury.

Paul J. Jenkins

insufficient cert. of service see MRCP 13(d)

May 16, 1994
APPEALS COURT
Allowed to 7/20/94 By
the Court, J.
Date: 5/16/94
ATTEST: Lena M. Wong
Assistant Clerk

May 16, 1994

APPENDIX B - DECISION OF THE MASSACHUSETTS APPEALS COURT ALLOWING JENKINS' SECOND MOTION REQUESTING AN EXTENSION OF TIME IN WHICH TO FILE BRIEF

Commonwealth of Massachusetts

Suffolk, SS. Appeals Court
94-P-714

Meetinghouse Cooperative Bank,
Plaintiff-Appellee

vs.
Green River Realty Trust, et als,
Defendant-Appellants

Motion of the Defendant-Appellants' For an Extension of Time In Which to File Brief and Appendix
(MRAP 14(b))

Now comes the appellants and move this Honorable Court for an order extending the time in which to file their brief and appendix (MRAP 14(b)) up to and including August 3rd, 1994. In support thereof, the Appellants refer the Court to the companion motion filed herewith with supporting affidavit.

Dated: July 15, 1994 By Appellants, pro se

Paul J. Jenkins, Trustee
Green River Realty Trust
Paul J. Jenkins, Trustee
PO Box 15
Holbrook, MA 02343-0015
(627) 961-5601

Appendix B

Commonwealth of Massachusetts
Appeals Court

July 7, 1994

Appeals Court
Allowed to 3 Aug 94

By the Court, J.
Date: 7 Jul 94
Attest: Gilbert P. Lima, Jr.
Assistant Clerk

APPENDIX C - DECISION OF THE MASSACHUSETTS APPEALS COURT ALLOWING JENKINS' MOTION FOR AN ORDER STAYING THE ISSUANCE OF A RESCRIPT

Commonwealth of Massachusetts

Suffolk, SS

Appeals Court
Docket No. 94-P-714

Meetinghouse Cooperative Bank,
Plaintiff-Appellee

vs.

Green River Realty Trust, et als
Defendant-Appellant

MOTION OF THE DEFENDANT-APPELLANT FOR AN ORDER STAYING ISSUANCE OF RESCRIPT

Now comes the appellant, under MRAP 23 and MRAP 14(b), and moves this Honorable Court for an order staying issuance of rescript up to and including April 19th, 1995.
Appellant states that this extension is necessary in order for the Appellant to file a timely application for further appellate review with the Supreme Judicial Court.

Dated: April 4, 1995

By the appellant, pro se,

Paul J. Jenkins, Trustee
Green River Realty Trust
Paul J. Jenkins, Trustee
PO Box 15
Holbrook, MA 02343-0015
(617) 961-5601

Commonwealth of Massachusetts
Appeals Court

April 7, 1995

Appeals Court

Allowed to 4/19/95

By the Court, J.
Dated 4/10/95

Attest: Ashley Ahearn
Assistant Clerk

APPENDIX D - DECISION OF THE MASSACHUSETTS APPEALS COURT ALLOWING MEETINGHOUSE'S MOTION TO PREVENT FURTHER STAY OF THE ISSUANCE OF RESCRIPT

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

MEETINGHOUSE COOPERATIVE BANK Plaintiff, v. MARTIN J. WOROBEY, TRUSTEE OF GREEN RIVER REALTY TRUST, et al., Defendants.	NO. 94-P-714

MOTION OF PLAINTIFF-APPELLEE MEETINGHOUSE COOPERATIVE BANK THAT PRO SE DEFENDANT PAUL J. JENKINS BE DENIED ANY FURTHER CONTINUANCES

Plaintiff Meetinghouse Cooperative Bank requests that pro se Paul J. Jenkins be denied any further extensions of time. In support of this motion, Meetinghouse states that Mr. Jenkins absolutely should not be allowed to obtain extensions of time in disregard of the rules of civil procedure. Mr. Jenkins did not

serve a copy of his April 7, 1995 request for an extension of time on Meetinghouse as provided by Rule 15 of the Massachusetts Rules of Appellate Procedure and Mr. Jenkins should not be allowed to further delay this litigation with dilatory tactics and frivolous motions filed in violation of those rules.

Although Mr. Jenkins has filed his motions pro se, he is apparently a former attorney illegally practicing law under the guise of a pro se title because his license to practice was suspended in 1986 for misusing client funds. (Exhibit A). Moreover, even if Mr. Jenkins were not an attorney formerly licensed by the Commonwealth, all pro se litigants must follow the rules of civil procedure. "The fact that [a] plaintiff is pro se does not excuse him from compliance with relevant rules of substantive and procedural law." Pandey v. Roulston, 419 Mass. 1010, 1011 (1995) (rescript).

In the present case, Mr. Jenkins filed a frivolous motion in the Superior Court to vacate a valid judgment that had been issued nearly two years prior. He then willfully disobeyed at least two Superior Court orders requiring him to appear for a deposition to ascertain his basis for standing to file such a motion. When the Superior Court sanctioned him by dismissing his frivolous motion, he filed a groundless appeal, and is now seeking to further delay the case by requesting extensions of time in which to request further appellate review. The result of this conduct is that Mr. Jenkins has now been successful in illegally practicing law in the Commonwealth for almost two years. Mr. Jenkins' involvement in the present case is in representation of Martin J. Worobey's interests, not his own. Mr. Jenkins' purpose in filing frivolous motions and using other dilatory tactics has been to prevent Meetinghouse

from enforcing its judgment against Worobey in Florida, where Worobey and his assets resided in 1993. Mr. Jenkins has now successfully obtained for Mr. Worobey almost two years in which to transfer, hide or otherwise dispose of the Florida assets against which Meetinghouse had initiated suit in 1993 in Florida.

As this Court held in its decision dated March 15, 1995, the dismissal, in the present case, of Mr. Jenkins' pro se motion, as a sanction for Mr. Jenkins' willful disregard of the Superior Court's orders, was well within the Superior Court's discretion. The Supreme Judicial Court has recently confirmed that when 'a [pro se] noncompliant litigation has manifested a disregard for orders of the court . . . a trial judge need not first exhaust milder sanctions before resorting to dismissal." Friedman v. Globe Newspaper, Co., 38 Mass. App. Ct. 923, 924 (1995) (rescript). Such a principle applies with even greater force to a pro se plaintiff like Jenkins who is "well educated [ ] and able to understand the clear language of" the Superior Court's orders as well as the Massachusetts Rules of Civil Procedure as he was once an attorney licensed to practice law in the Commonwealth. See Friedman v. Globe Newspaper Company, 38 Mass. App. Ct. 923, 924 (1995) (rescript).

WHEREFORE, Meetinghouse requests that pro se defendant Paul J. Jenkins be denied any further continuances and that he be required to comply with the Massachusetts Rule of Civil Procedure during the remainder of the case.

MEETINGHOUSE COOPERATIVE BANK,
By its attorneys,

_____

Keith C. Long (BBO #304220)
Christa A. Arcos (BBO #558851)
WARNER & STACKPOLE
75 State Street
Boston, MA 02109
(617) 951-9000

Dated:4/12/95

Appendix D

CERTIFICATE OF SERVICE

I hereby certify that a true copy of The above document was served upon the attorney of record for each other party by mail on April 12, 1995. Christa A. Arcos (BBO #558851)
Commonwealth of Massachusetts
Appeals Court April 12, 1995

Appeals Court

Mr. Jenkins should not anticipate an enlargement beyond 4/19/95 in which to file an application from further appellate review or to stay issuance of rescript.

4/13/95 By the Court,
Attest: Ashley Ahearn, Asst. Clerk

APPENDIX E - MEMORANDUM OF DECISION FROM THE MASSACHUSETTS SUPREME JUDICIAL COURT SUSPENDING PAUL J. JENKINS' LICENSE TO PRACTICE LAW IN THE COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. 86-25 BD

IN RE: PAUL J. JENKINS

MEMORANDUM OF DECISION

This proceeding arises from a series of interrelated events triggered by a singular family situation. On March 8, 1985, Bar Counsel filed a Petition for Discipline with the Board of Bar Overseers (Board). Before a hearing committee of the Board, the attorney stipulated to a statement of agreed facts and joined in Bar Counsel's recommendation that the attorney be suspended from the practice of law for two years.

Following a hearing, the hearing committee made the following findings based on the stipulated facts. The attorney's mother died in 1979 after his brother Daniel, much to the attorney's distress, unilaterally authorized a doctor to terminate her life support system. In his capacity as administrator of his mother's estate, the attorney brought an action for wrongful death against the doctor and recovered a judgment of approximately $34,400 after payment of attorney's fees and costs. This sum he deposited in a personal checking account held jointly with his sister. Believing that Daniel was not entitled to any part of the estate, he refused to distribute a

share of the recovery to him. Within three months, the checking account was depleted.

With slightly less than $10,000 the attorney opened a "guardianship account" for his mentally retarded brother Charles. This account was eventually closed with no evidence of payments to or on behalf of Charles. Some time later a second account for Charles was opened with a $1,200 deposit. The attorney was also receiving Social Security payments on behalf of Charles, some of which he commingled with personal funds and used for business and personal expenses. Eventually he was ordered to render an accounting to the Probate Court of his handling of Charles's affairs. The account which he filed was by agreement perjurious. The attorney and his sister ultimately agreed to reimburse Charles's estate.

The attorney was admitted to the practice of law in the Commonwealth on December 19, 1980. The committee concluded that the attorney's youth and inexperience were factors which mitigated the gravity of his conduct, as was the emotional trauma which he was undergoing as these events transpired. He has acknowledged his dereliction, has cooperated fully with Bar Counsel, and is in the process of making full restitution.

In consideration of these facts and on recommendation of the Board of Bar Overseers that the attorney be suspended from the practice of law for two years, a judgment shall be entered accordingly.

July 31, 1986

Herbert P. Wilkins

_____

Herbert P. Wilkins
Associate Justice

APPENDIX F - M.G.L. C.221, §46A

§46. Practice of law by corporations; prohibition; exception.

No corporation or association shall practice or appear as an attorney for any person other than itself in any court in the commonwealth or before any judicial body or hold itself out to the public or advertise as being entitled to practice law, and no corporation or association shall draw agreements, or other legal documents not relating to its lawful business, or draw wills, or give legal advice in matters not relating to its lawful business, or practice law, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular; provided, that nothing herein shall prohibit a corporation or association from employing an attorney in regard to its own affairs or in any litigation to which it is or may be a party or the insurer of a party. Any corporation or association violating this section shall be punished by a fine of not more than one thousand dollars; and every officer, agent or employee of any such corporation or association who, on behalf of the same, directly or indirectly, engages in any of the acts herein prohibited, or assists such corporation association to do such prohibited acts, shall be punished by a fine of not more than five hundred dollars.

The provision of this section shall not apply to a professional corporation organized to practice law under chapter one hundred and fifty-six A. Amended by St.1935, c.346, § 1; St. 1963, c. 654, § 4.

APPENDIX G - M.G.L. C.221, §46

§46A. Practice of law; persons authorized

No individual, other than a member, in good standing, of the bar of this commonwealth shall practice law, or, by word, sign, letter, advertisement or otherwise, hold himself out as authorized, entitled, competent, qualified or able to practice law; provided, that a member of the bar, in good standing, of any other state may appear, by permission of the court, as attorney or counselor, in any case pending therein, if such other state grants like privileges to members of the bar, in good standing, of this Commonwealth.
Added by St. 1935, c. 346, § 2.

APPENDIX H - RULE OF THE MASSACHUSETTS RULES OF CIVIL PROCEDURE 37(b)(2)(C).

Rule 37. Failure to Make Discovery: Sanctions

(b) Failure to Comply With Order.

(2) *Sanctions by Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.